

presiding officer at a prehearing conference.

§ 17.23 Discovery.

(a) No later than 60 days prior to the hearing, unless otherwise ordered by the presiding officer, a party may make a request to another party for production, inspection, and copying of documents that are relevant to the issues before the presiding officer. Documents must be provided no later than 30 days after the request has been made.

(b) For the purpose of this part, the term *documents* includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form readily accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions, and any forms of discovery, other than those permitted under paragraphs (a) and (e) of this section, are not authorized.

(d)(1) Within 10 days of service of a request for production of documents, a party may file a motion for a protective order.

(2) The presiding officer may grant a motion for a protective order, in whole or in part, if he or she finds that the discovery sought:

- (i) Is unduly costly or burdensome,
- (ii) Will unduly delay the proceeding, or
- (iii) Seeks privileged information.

(3) The burden of showing that a protective order is necessary shall be on the party seeking the order.

(4) The burden of showing that documents should be produced is on the party seeking their production.

(e) The presiding officer shall order depositions upon oral questions only upon a showing that:

(1) The information sought cannot be obtained by alternative methods, and

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

§ 17.25 Exchange of witness lists, witness statements, and exhibits.

(a) At least 30 days before the hearing, or by such other time as is specified by the presiding officer, the parties shall exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including written testimony.

(b)(1) If a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the presiding officer will exclude such evidence if he or she determines that the failure to comply with paragraph (a) of this section should result in its exclusion.

(2) Unless the presiding officer finds that extraordinary circumstances justified the failure to make a timely exchange of witness lists under paragraph (a) of this section, he or she must exclude from the party's hearing evidence the testimony of any witness whose name does not appear on the witness list.

(3) If the presiding officer finds that extraordinary circumstances existed, the presiding officer must then determine whether the admission of the testimony of any witness whose name does not appear on the witness lists exchanged under paragraph (a) of this section would cause substantial prejudice to the objecting party. If the presiding officer finds that there is not substantial prejudice, the evidence may be admitted. If the presiding officer finds that there is substantial prejudice, the presiding officer may exclude the evidence, or at his or her discretion, may postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence.

(c) Unless a party objects within 5 days prior to the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 17.27 Hearing subpoenas.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may, when authorized by law, request that the presiding officer issue a subpoena.